

# BOARD OF ZONING APPEALS

## MINUTES

6:30 p.m.

January 15, 2020

Council Chambers

**MEMBERS PRESENT:** Harrison Case, Chris Benison, Garrett Tomblin, Heidi Cook and Kevin Meehan

**MEMBERS ABSENT:** None

**STAFF:** John Whitmore

- A. CALL TO ORDER AND ROLL CALL:** Mr. Case called the meeting to order and read the standard explanation of how the Board conducts business and rules for public comments.
- B. 2020 Leadership Election: Chair and Vice-Chair:** Mr. Tomblin nominated and seconded by Ms. Cook to have Harrison Case continue as chair of the board. The motion was unanimous. Motion by Ms. Cook and seconded by Mr. Benison to have Kevin Meehan continue as vice chair.
- C. MATTERS OF BUSINESS:** Minutes for the December 18, 2019 hearing were reviewed and approved.
- D. UNFINISHED BUSINESS:** None.
- E. NEW BUSINESS:**
  1. **CU20-01 / LM Morgantown, LLC / 419 High Street:** Request by Brandon Mathess of LM Morgantown, LLC for approval of a conditional "Restaurant, Private Club" use; Third Ward Tax District, Tax Map 26, Parcel 80; B-4, General Business District.

Whitmore presented the Staff Report for CU20-01 and noted the petitioner is present.

Alexandria Beto, an attorney with Bowles Rice, is representing the petitioner. Business address is 125 Granville Square, Suite 400, Morgantown, WV 26501. Brandon Mathess, the General Manager of Lotsa Stone Fired Pizza, and Michael Cardi, Partner at Bowles Rice, are also present tonight.

Ms. Beto stated that Lotsa Stone Fired Pizza is a fast and casual restaurant located on High Street in downtown Morgantown. This business has been in operation since October, 2015. The family of the owners are former WVU students who grew to love Morgantown and WV. They desire to obtain this liquor license for the purpose of growing the business and becoming competitive in the downtown Morgantown area. It in no way desires or intends to become a club. Its specialty is pizza and it intends to continue to serve pizza and specialize in this area. They would like to expand the menu, provide some additional options and increase business revenue. We have submitted all documentation regarding this conditional use application. The application

to the ABCA is complete and we are awaiting some final client signatures before submitting to the state. We have every expectation that the state will approve this application.

Case asked and confirmed that there were not questions. Case declared the public hearing open. Case asked if there was anyone present who wishes to speak in favor of or in opposition to this request.

Ken DuVall, owner of Extensive Enterprises a downtown rental company. I have a couple questions. First, I think Lotsa has been a great addition to the downtown. In the last couple years any of us business owners that have been downtown have seen a steady decline and it's accelerating. I think we need more diversity downtown, more options to get people down here than going to the mall and shopping at places where there is free parking. The question that I have, is about the conditional use. From my understanding on a conditional liquor license, which you guys approved, has a couple restrictions in there. One of them is that if it's a conditional use, they have to stop serving alcohol by 1:00 a.m. Is that correct? Case stated that after his questions were completed, that Staff could address this question. DuVall stated that he recently purchased a building right behind this location that has two grandfathered liquor licenses in there. That has some value to me because they can serve alcohol until 3:00 a.m. I have tried to speak with Chris Fletcher many times, and this has nothing to do with Lotsa, but if you grant a conditional use license, what exactly does that mean? Once you put a liquor license in a location, what happens if they don't abide by the conditions anymore? Who enforces that? Who is going to show up at 1:00 a.m. and say that they can no longer sell alcohol? If it is a conditional use license at 1:00 a.m. does that just cut off the alcohol sales and they can still run their food till 4:00 a.m.? They do have a very good late-night business. This is why I came here today is to see who is in charge of enforcing this. There have been instances in the past where we have had restaurants that had conditional use. Dragonfly was one, Sidelines was one and we have also had one that has a conditional use license that runs until 4:00 a.m. The city police used to enforce it, but now they are telling me that they can't. Lotsa currently has eight different location. I am in favor of them getting it. If they can pass it through ABC and they are not to close to the church, I think that they would run a quality business over there in addition to what they are doing with liquor.

Case mentioned that we are here today only on this specific case, but would be glad to hear thoughts on this specific application. DuVall stated that he is in favor of it.

Case asked and confirmed that there was no one else present to speak. Case asked Whitmore if it would be proper to have a rebuttal? Whitmore stated that the annex provides that you may provide a rebuttal. Case stated that at this point, per the rules, he would offer the opportunity for Lotsa to provide a rebuttal to anything that was said during the public hearing. Lotsa stated there was no rebuttal. Case declared the public hearing closed.

Whitmore presented the Staff Recommendation.

Staff recommends conditional "Restaurant, Private Club" use approval be granted under Case No. CU20-01 for LM Morgantown, LLC doing business as *Lotsa Stone Fired Pizza* as requested with the following conditions:

1. That the petitioner must maintain compliance with all supplemental regulations set forth in Section 1331.06(27) of the Planning and Zoning Code.
2. That the petitioner must maintain permitting from the Monongalia County Health Department as a "restaurant" under the Monongalia County Clean Indoor Air Regulations.

3. That, to sustain the establishment's obligation to remain a bona fide restaurant, *Lotsa Stone Fired Pizza* must be open no later than 11:00 a.m. at least (5) days a week for the purpose of serving lunch.
4. That *Lotsa Stone Fired Pizza* maintain a seating capacity of at least 50 persons and that seats at a bar may not be counted as meeting the minimum seating capacity.
5. That the petitioner shall voluntarily submit all necessary financial information to the City for the subject establishment following its first twelve (12) months of operation as a "Restaurant, Private Club" use to ensure compliance with Article 1331.06 (27) (e) provisions, which requires the sale of food and non-alcoholic beverages to comprise a minimum of 60 percent of total gross sales of all food and drink items in each calendar month.
6. That the beneficiary of this conditional use approval is specific to LM Morgantown, LLC (DBA *Lotsa Stone Fired Pizza*). Said beneficiary may not be transferred without prior approval of the Board of Zoning Appeals.

Case stated that before we get into specific points that were raised by the applicant, we did have one public comment which was in favor of this application but raising some questions about conditional use and hours of serving alcohol. I didn't note anything that was specifically addressed in this petition but is there is anything that was brought up that the Board needs to be concerned with, or if there was some confusion. Whitmore stated that conditional restaurant/private club in the B4 district is required to comply with Article 1331.06(27) and specifically regarding the sale of alcoholic beverages. Section G includes that liquor or wine shall not be served later than 1:00 a.m. except on New Year's Eve. Case asked if that was for any establishment that would be operating under this provision and Whitmore stated that was correct. Case asked if there were other establishments that have a different classification that can serve later. Whitmore stated that yes there are, they would be legal unique pre-existing non-conforming private club established in accordance with Section K. There are a few extra carve outs that are permitted for restaurant private clubs. Case stated that to clarify, in this case, they would have to stop serving at 1:00 a.m. except for New Year's Eve. Whitmore stated that this would be a Planning and Zoning Code related issue. What would occur, hypothetically, any Planning and Zoning Code complaint we receive, we investigate. If we find evidence of the complaint existing, we proceed either to municipal court or circuit court as required to stop the activity. Case clarified that this cleared up the questions mentioned in the public hearing. Just to reiterate, it is Staff's position that the fact that they are going to be required and are already applying for a certain type of license from the ABCA is outside of our jurisdiction. We just find if they meet the requirements that are set forth in our Planning and Zoning Code. To consider where the church is would probably be inappropriate unless it affected one of the other factors. Also, Case wanted to note for the record, although it was in the report, that at least five of us did visit the site about a week ago and were given a tour of where the alcohol would be served. It was my understanding from that tour that there is no actual serving bar, as if you were going to sit at the bar and order drinks. Drinks would be brought out and served. Nothing in the restaurant would change physically, other than the bar back area to make the drinks. Between that and the presentation from Council today, along with Staff's recommendation, I am satisfied that conditions have been met in this case. Do other members of the board have concerns or questions? There were no questions.

Mr. Meehan made a motion to approve the following Findings and Fact, as outlined in Addendum D and seconded by Mr. Benison.

**Finding of Fact No. 1** – Congestion in the streets is not increased, in that:

Prior to this application, the business has been in operation without appreciable negative effect. A restaurant, private club use should not have influence on street congestion as the offering of additional alcoholic beverages should not alter traffic around the site.

**Finding of Fact No. 2** – Safety from fire, panic, and other danger is not jeopardized, in that:

The building meets or exceeds all current local and state required safety standards.

**Finding of Fact No. 3** – Provision of adequate light and air is not disturbed, in that:

The existing building does not change any light or air flow patterns as no modifications are being requested.

**Finding of Fact No. 4** – Overcrowding of land does not result, in that:

No physical changes to the existing building will result in the granting of this application.

**Finding of Fact No. 5** – Undue congestion of population is not created, in that:

The proposed conditional restaurant, private club use should have no effect on the congestion of population.

**Finding of Fact No. 6** – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The additional alcoholic beverages to the menu will not result in additional demand on existing infrastructure than current requirements.

**Finding of Fact No. 7** – Value of buildings will be conserved, in that:

This request would not alter the physical characteristics of this site or any other site.

**Finding of Fact No. 8** – The most appropriate use of land is encouraged, in that:

Granting the conditional restaurant, private club application would not broaden the current business's customer service capabilities.

The motion was approved unanimously.

Case asked for a motion as to the granting of the variance presumably with the conditions set by Staff. Motion by Ms. Cook, seconded by Mr. Tomblin to grant the variance with the six staff recommended conditions. This was also unanimous.

Case reminded the petitioner that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- 2. V20-01 / Little General / 600 Willey Street:** Request by Jackson Gardner of Triad Engineering, Inc., on behalf of Little General, for variance relief from Article 1347 concerning setbacks; Third Ward Tax District, Tax Map 26, Parcel 299; B-2, Service Business District.

Whitmore presented the Staff Report for V20-01 and noted that the petitioner was present.

Jackson Gardner, Triad Engineering, 1097 Chaplin Road, Morgantown, WV 26501. We are requesting a variance for a setback encroachment. This proposed work will allow for unwanted access onto that side corner of the property which currently has a lot of loitering. It will also enhance the aesthetics of the area. We have gone after the site plan meeting and added a sidewalk and privacy access to that left side, to limit unwanted access between our building and the adjacent property. This proposed work also does not decrease the existing parking. It still allows for the proper setback for the parking to Willey Street. The new parking configuration allows for parking size and ADA accessibility. Following the site plan meeting we have added bollards surrounding the addition, providing greater protection to the building. Reasons for placement include problems with reconfiguration of the inside of the building that goes into customer space, employee space, ingress and egress from the building, storage space and also with other property lines of the parcel. We do provide access with a sidewalk, and there is also vegetated buffer between shielding off from the adjacent property and enhancing the aesthetics of the area.

Case asked if members of the Board had any questions?

Benison asked if they were anticipating any adverse impact on available parking. You are not going to be losing, just shift and reconfigure, correct? Jackson stated that the two spaces that were there originally got pushed up in front of the structure. It still adds over the twenty-foot requirement to that front property line. Case asked if they are redoing the whole façade of the building? Jackson stated they are matching the façade. Case asked if there would be windows on this “cube” or any other features or signage? Jackson stated it was just a projection out with no windows or signage. This would strictly be cooler space. Tomblin asked if there would be any traffic circulation issues regarding deliveries? Jackson stated that the existing delivery space does not get impeded by the change in the parking configuration. It will remain as it is now. Case mentioned page 38 of the packet, the two pictures. The current space between your client’s property and the building immediately adjacent to it, where is it that there are issues of people loitering. Is it between the two buildings, behind? Jackson stated that the area in question is the left side corner. Homeless and other assorted people hang out and cause disruption to that area close to the ice machines. Case mentioned the gas meter and stated that they are not going all the way out to leave access to the meter. Jackson stated that without adjusting the historical entrances, this is the best option. Benison asked about the ice chests and would they be moved, and Jackson stated they would be moved past the sidewalk.

Case opened the public hearing and asked if anyone was present to speak. There were none and the public hearing was closed.

Whitmore presented the Staff Recommendation that explained that there was no direct staff recommendation but that in the event the Board granted approval of the variance staff recommended the approval include the following conditions:

1. That Building Permit Application No. 2019-00001040 must be revised to include requisite Type II Site Plan application information and materials;
2. That, to the satisfaction of the Planning Division, requisite vertical physical separation of the proposed addition from the adjoining parking spaces shall be installed in accordance with Section 1365.09(B)(4)(d) of the City of Morgantown Planning and Zoning Code; and

3. That, to the satisfaction of the Planning Division, landscape island improvements identified in the 26 NOV 2019 draft of the Type II Site Plan for Case No. S19-06-II shall be designed and installed to ensure proper access to the on-site gas meter, as determined by the Engineering Department.

Case asked if there were any questions from the Board. Meehan stated that the setback is zero based on historical, obviously built on the property line. Case stated that all we are doing in this case is allowing them to extend that somewhat further. He thinks that having that landscaping buffer in addition to the reason of having it for the parking, it is a little help to soften that boxy look coming out from the front of it. He doesn't see any reason not to approve with the conditions suggested by Staff. Motion by Mr. Tomblin to accept the revised Findings of Fact set forth in the packet and seconded by Mr. Benison.

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

- The proposed addition will have a greater side yard setback than the existing building.
- The proposed work does not allow unwanted access to the side of the building between parcels 300 and 299.
- Construction will create an aesthetically pleasing vegetated screen/side yard buffer from the adjacent property.
- Proposed work provides greater protection from vehicular traffic to the neighboring church property.
- Proposed façade will best match the existing buildings masonry preventing an unappealing view from the surrounding area.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

- The structure directly to the south of the Little General property is also a nonconforming structure as it has a .82' setback from the Little General structure's parcel.
- The location of the addition is necessary to accommodate the current configuration of the building (customer space, employee space, ingress/egress, storage space, etc.).

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

- The proposed location prevents a redesign of the entire inside layout of the store and property.
- Proposed work increases the aesthetics of the property by providing landscape and a matching façade to the existing building.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

- Though it is requested to have a 1.18' encroachment, proposed condition will adhere to the 6' side yard landscaped buffer per ordinance 1367.08(C)(2).
- Side yard buffer will have an evergreen vegetated screen to the adjacent property.
- Proposed façade will match, to the best of its ability, the existing building to which the addition will be constructed too.

The vote was unanimous. Cook moved to grant the variance with conditions, seconded by Mr. Meehan. It was unanimous.

Case reminded the petitioner that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- 3. V20-02 / Chase Bank / 461 High Street:** Request by Crystal Miller of City Neon, on behalf of Chase Bank, for variance relief from Article 1369 concerning signage; Third Ward Tax District, Tax Map 26, Parcels 75 and 76; B-4, General Business District.

Whitmore presented the Staff Report and noted the petitioner is present.

Crystal Miller, City Neon, 295 Chaplin Road, Morgantown, WV 26501. Crystal stated that she came before the Board in May of 2019 asking relief from the code for a larger sign area and materials. Since then, the building has neared completion. Members of Chase Bank sent representatives from their corporate offices to view the jobsite. When they took a walk down High Street, they realized that illuminated signage was allowable in certain instances in the City of Morgantown. They would like to receive the same treatment and would like to have their sign illuminated.

Questions from the Board? Tomblin asked if the whole sign would be illuminated or just parts of the sign? Miller stated it will be a channel letter stacked. It was already set up as a dimensional letter, instead of the gooseneck lighting being above the sign focusing downward onto it, the lights will be inside the individual letters so it will be a halo effect with minimal glow. The letters will be the only thing illuminated beside the symbol. Case asked Miller and Whitmore if the other tenants in this building are doing illuminated signs? Miller stated there was cabinet sign in the building illuminated but was unsure if it was interior or not. She stated there would no above lighting, that it would all be interior now.

Whitmore asked the applicant to confirm that the letter itself will be a cabinet, and will the lighting be shining through or behind the letter? Example will the C in Chase Bank be lit around the C or is light coming through? Ms. Miller stated that there is a new type of vinyl called day/night vinyl. In the day it looks black but when it is illuminated it is white. Ms. Miller stated there are actually three signs. One on Forest Avenue, one on High Street and a suspended sign. Whitmore stated that on page 60 of the staff report includes the schematic of the building showing the signs.

Case opened the public hearing. Seeing none the hearing is closed.

Whitmore provided the staff recommendation

It is the duty of the Board of Zoning Appeals to determine whether the proposed request

Case asked for a motion to approve the findings of fact. Tomblin motioned to approve, seconded by Ms. Cook. It was unanimous.

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The signage requested will be divided onto two faces of the building. Each face that will have signage faces a street; High Street on the front of the building and Forest Avenue that connects High Street to the parking lot at the rear of the building. The proposed signage will complement

other tenants and downtown business establishments providing commercial messaging to pedestrian oriented traffic and illumination will be in keeping with the districts existing commercial signage.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The signage is in keeping with existing signage in the area including internal illumination that is found on other downtown business establishments' wall signage. Illumination of the signage should be provided to allow for downtown tenant equity in commercial advertising.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

The small downtown lot does not allow the room for more traditional ground signage that could be used for way finding purposes. The tenant will utilize the front signage for pedestrians and motorists traveling High Street, and the Forest Avenue sign to attract pedestrian traffic from further down High Street. Illumination and increased area will allow adequate advertising for the pedestrian scaled "financial services" use.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

The client will be able to keep the signage on par with their corporate styling across the nation and provide adequate commercial advertising throughout the day and evening as appropriate, in keeping with the design of the structure. The signage design will function to promote the individual business use and appears strengthen downtown's overall commercial business corridor.

Cook moved to grant the variance; Meehan seconded.

Case reminded the petitioner that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- 4. V20-03 / Automax / 525 Don Knotts Boulevard**: Request by Crystal Miller of City Neon, on behalf of Automax, for variance relief from Article 1369 concerning signage; First Ward Tax District, Tax Map 37, Parcel 5.1; B-4, General Business District.

Whitmore presented the Staff Report and noted the petitioner is present.

Crystal Miller, City Neon, 295 Chaplin Road, Morgantown. Ms. Miller stated that Auto Max has taken over the old Waterfront Jeep dealership. They would like to keep the Waterfront because it is the first or last property of the Waterfront development and would like to keep it as significance to that. The addition of the Auto Max signs to that makes the appearance off. The size we are asking for sounds like a lot, but given the size of the property and the way the building is oriented, it is limited to signage on the two ends of the building which brings the allotment from the city code down. They would like to utilize both sides of the building just as Jeep did, because one side is sales and the other side is service. They would like to have both sides designated for easier wayfinding for all their patrons. There is a slight difference in the amount of signage

between the Jeep and the Auto Max. The Auto Max is slightly larger, the sales sign for Jeep was 32 square feet, ours is 31.8 which is essentially the same. On the rear side which was the service side Auto Max is requesting a larger sign at 74 square feet, where Jeep had one that was 45. The difference is that Jeep did have a ground sign on site in the parking lot and Auto Max has chosen not the route of a ground sign.

Case asked about the photos included in the packet. Miller stated the bottom photo is the proposal, the others are previous pictures from Jeep.

Public hearing is open. Any questions? Being none, the public hearing is closed.

Whitmore presented the Staff Recommendation.

Case asked if the any Board members had questions or comments regarding this application? Case noted that this is in the B4 district, but it is not High Street. It is a 50-mph road and you can see from the pictures on it is well below the road. Looking at the pictures submitted, even though the numbers are big in terms square footage variance, the proposed signs don't seem to be out of proportion for the building or the City. Benison noted that he agrees that site topography does constitute a hardship.

Case asked for a motion to adopt the findings of fact. Motion to approve by Benison, seconded by Cook. It was unanimous.

**Finding of Fact No. 1** – The variance will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents, because:

The tenant would like to install new signage in place of previous signage as well as keep existing signage. This existing signage, from the previous tenant that designated this building as part of the Waterfront development area, is an internally illuminated channel letter set. The previous signage has did not make any negative impact on adjacent property owners throughout the years, and the change of sign copy associated with the new signage would not be anticipated to have any meaningful negative externality to the community.

**Finding of Fact No. 2** – The variance arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance, because:

The site has two entrances into the lot: Sales and Service located on opposite sides of the building. This particular stretch of Don Knotts Blvd is a 50-mph divided four lane road and is highly traveled. The building is nestled into the hillside of Don Knotts as a effective use of land space, but forced the signage and entrances to be placed onto the smaller side of the building creating as smaller sign allowance.

**Finding of Fact No. 3** – The variance will eliminate an unnecessary hardship and permit a reasonable use of the land, because:

Site topography in combination with sign area restrictions in the B-4, General Business District limit the practical commercial use of this location. Variance relief as requested would permit the continuation of a legal, pre-existing nonconforming land-use, that provides practical benefit to the residents of the City of Morgantown in its physical location.

**Finding of Fact No. 4** – The variance will allow the intent of the zoning ordinance to be observed and substantial justice done, because:

While the site is zoned B-4, General Business District, it is not located in the downtown and is at the terminus of the Wharf District. Access to the site is primarily achieved via a 50-mph roadway that requires commercial messaging that is not scaled to pedestrian foot traffic as is the focus of the area computation for the B-4, District. The tenant will be able to effectively advertise along a very busy stretch of Don Knotts Blvd with variance relief as requested.

Motion to grant the variance by Cook, seconded by Tomblin. It was unanimous.

Case reminded the petitioner that the Board's decisions can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

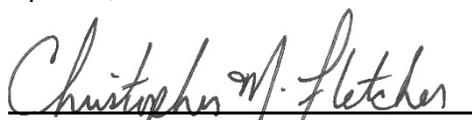
**ANNOUNCEMENTS:** Whitmore informed the Board that they would not be having a meeting in February 2020 as there are no business items for the agenda.

**ADJOURNMENT:** 7:35 p.m.

MINUTES APPROVED:

April 15, 2020

BOARD SECRETARY:

  
Christopher M. Fletcher, AICP